



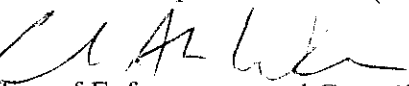
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
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CHICAGO, IL 60604-3590

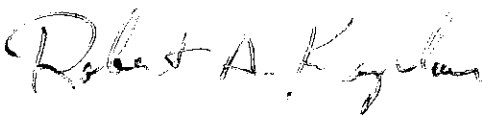
REPLY TO THE ATTENTION OF:

MEMORANDUM

DATE: JUN 21 2011

SUBJECT: Memorandum of Agreement for Cooperating Agency Status on NorthMet Mine Project Environmental Impact Statement (EIS)

FROM: Alan Walts 
Director, Office of Enforcement and Compliance Assurance

Robert A. Kaplan  /s/ original signed by
Regional Counsel Susan Hedman

TO: Susan Hedman
Regional Administrator

I am requesting that you sign the attached MOU regarding the U.S. Environmental Protection Agency's role as a cooperating agency on the NorthMet Copper/Nickel Mine in St. Louis County, Minnesota. This MOU is between the EPA and the co-lead agencies for the EIS, the U.S. Army Corps of Engineers, the U.S. Forest Service, and the Minnesota Department of Natural Resources.

The MOU spells out each agency's responsibilities during the NEPA process from this point forward. As the Supplemental Draft EIS and Final EIS are developed, they are subject to public comment. The EPA is already participating intensively in a series of workgroups convened by the co-lead agencies to address the major issues raised by the EPA and other commenters on the fall 2009 Draft EIS. These workgroups are developing a revised alternative that will be evaluated in the Supplemental Draft EIS. The MOU also establishes a dispute resolution process.

This MOU was routed concurrently in each agency. Each of the other three agencies has already signed a separate signature page (copies are attached). The MOU will take effect once the EPA signs it. The original signature pages are being forwarded to the MDNR for consolidation and distribution.

Attachment

**MEMORANDUM OF UNDERSTANDING AMONG THE U.S. ARMY CORPS OF
ENGINEERS, THE U.S. DEPARTMENT OF AGRICULTURE FOREST
SERVICE, THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES,
AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY FOR THE
PROPOSED NORTHMET MINING PROJECT AND ASSOCIATED LAND
EXCHANGE IN NORTHEASTERN MINNESOTA**

This Memorandum of Understanding (MOU) is made and entered into this date, 8-27-11, by and among the U.S. Army Corps of Engineers (USACE), the U.S. Department of Agriculture Forest Service (USFS), the Minnesota Department of Natural Resources (MnDNR), and the U.S. Environmental Protection Agency (U.S. EPA) for the purposes of establishing U.S. EPA as a cooperating agency to consult on the development of the joint Federal-State environmental impact statement (EIS) for the proposed NorthMet project near Hoyt Lakes and Babbitt, Minnesota, referred to hereafter as NorthMet or the Proposed Project or the Project.

A. GENERAL

PolyMet Mining, Inc. proposes to excavate a large polymetallic disseminated magmatic sulfide deposit approximately 6 miles south of the town of Babbitt, Minnesota. The Proposed Project will require a permit from the USACE under Section 404 of the Clean Water Act (33 U.S.C. § 1344), and a land exchange agreement with the USFS in accordance with the Weeks Act of 1911, amongst other state and local permits. The Proposed Project is a major Federal action affecting the quality of the human environment requiring the preparation of a Federal environmental impact statement pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321-4347) and its implementing regulations (40 C.F.R. parts 1500-1508). The Proposed Project requires preparation of a mandatory State EIS under the Minnesota Environmental Policy Act (MEPA) and the *Minnesota Rules*, part 4410.4400(8)(C), which designates the MnDNR as the Responsible Governmental Unit (RGU). USACE, USFS, and MnDNR are preparing a joint supplemental draft environmental impact statement (SDEIS) for the Proposed Project.

USACE and the MnDNR prepared a joint draft environmental impact statement (DEIS), released in October 2009, to meet Federal and state requirements. At that time, the USFS intended to prepare a separate DEIS for its land exchange action. However, subsequent consideration has deemed the proposed land exchange as a connected action to the proposed NorthMet project.

At USACE's request, U.S. EPA's participation in the development process from 2005 through the review of the October 2009 DEIS involved not only reviewing and commenting on scoping, as is customary for most significant projects, but also reviewing preliminary drafts and, in some cases, supporting documentation on wetlands impacts and analyses. U.S. EPA submitted comments on the DEIS on February 18, 2010, and assigned the project and the DEIS a rating of EU-3 (Environmentally Unsatisfactory – Inadequate Information) for impacts to wetlands and water quality, and other issues. In

the intervening time, USACE and MnDNR have decided to prepare an SDEIS, and USFS has become a co-lead Federal agency for the project, now including its land exchange action in future documents. U.S. EPA has agreed to become a cooperating agency pursuant to NEPA for the development of the EIS in order to participate in resolving issues identified in U.S. EPA's February 18, 2010 comment letter on the Project's initial DEIS and to inform the future SDEIS and final EIS (FEIS).

B. Respective PARTICIPANT RESPONSIBILITIES Relative to this agreement

USACE, USFS, MnDNR: LEAD AGENCIES

Since both USACE and USFS have Federal actions pertaining to the Project, these agencies have elected to become co-lead Federal agencies for the implementation of NEPA and the preparation of the SDEIS and FEIS. The Project also requires preparation of a mandatory State EIS under MEPA and the *Minnesota Rules*, part 4410.4400(8)(C), which designates the MnDNR as the Responsible Governmental Unit (RGU), or lead State agency. At MnDNR's request, the Minnesota Pollution Control Agency (MnPCA) is assisting in the preparation of the SDEIS, and will also assist in preparing the FEIS.

USACE, USFS, and MnDNR are co-lead agencies for the joint Federal-State EIS. As such, these agencies are responsible for the content of the SDEIS and FEIS and have final authority over the language used in the document.

USACE, USFS, and MnDNR agree to :

- Identify a project manager within each agency.
- Conduct scoping jointly pursuant to both NEPA and MEPA.
- Develop and maintain a Communication and Coordination Plan in a collaborative environment that identifies workgroup teams and team member roles and responsibilities.
- Coordinate, as appropriate, with other State and Federal agencies (e.g., the MnPCA, the Minnesota Department of Health, the Minnesota Department of Transportation, U.S. EPA, and the U.S. Fish and Wildlife Service) to obtain participation, feedback, input and comments regarding the SDEIS and FEIS.
- ① ▪ Provide workgroup products throughout the development process to cooperating agencies, incorporating adequate review time for drafts into schedules and deadlines developed by the co-lead agencies, in consultation with cooperating agencies.
- Actively engage the cooperating agencies in order to gain their full and timely participation.
- Use input from cooperating agencies that is based on the cooperating agencies' jurisdiction or special expertise in the development of the SDEIS to the maximum extent possible.
- Adhere to the milestone schedule, as set forth in an exhibit to the MOU, unless modified by mutual agreement between the co-lead agencies.
- ② ▪ Determine appropriate schedules and deadlines, after consulting with U.S. EPA, for U.S. EPA's review and comment on draft documents prior to issuance of the SDEIS and prior to issuance of the FEIS. Circulate preliminary drafts of the SDEIS and

FEIS among the lead and cooperating agencies for comment before the drafts are publicly released.

- Identify agencies with statutory responsibility, agency mission, or special expertise and invite them to participate as cooperating or participating agencies in the EIS development process.
- Lead and manage interim workgroups/discussion groups to: discuss and develop Project alternatives for the SDEIS; resolve issues identified by U.S. EPA and other cooperating parties that are pertinent to development of the SDEIS; plan impact assessments for the SDEIS; and facilitate these workgroups to discuss results of impacts analysis.
- Allow cooperating agencies 30 days to review and comment on any preliminary SDEIS, unless a shorter review period is mutually agreed upon by all parties to the MOU. Comments may be in writing or email. Lead agencies will confirm changes to schedules and review periods in writing or e-mail. These changes will be extended to all cooperating agencies.
- Manage the EIS preparation and review.
- Organize and lead public meetings, public hearings, or other public involvement pursuant to NEPA and MEPA.
- Manage the preparation of the FEIS and response to comments, including distribution and subsequent review by cooperating agencies.

USACE and USFS, as co-lead Federal Agencies agree to:

- Take the lead in consulting with Federally-recognized Tribes (Tribes) in recognition of their status as sovereign nations in accordance with Federal law and regulations in the preparation of the SDEIS.
- Consult with Tribes on issues not fully addressed in the NEPA process.
- Identify how the EIS will be used for future Federal decision documents and/or Federal permits, such as the CWA 404 permit.

U.S. EPA: COOPERATING AGENCY

Under the Clean Air Act, Section 309 (42 U.S.C. § 7609), U.S. EPA has the authority and obligation to review all Federal EIS documents and publish its review in the public record. U.S. EPA has regulatory authority under numerous environmental statutes which are implemented under agreements with States and Tribes and for which U.S. EPA retains an oversight role. U.S. EPA has shared authority with USACE for CWA Section 404 (33 U.S.C. § 1344). U.S. EPA will focus its efforts on chapters and subject areas affected by U.S. EPA's regulatory authorities.

U.S. EPA will not be signatory to the EIS nor be responsible for preparing any portion of the EIS or related technical reports. However, U.S. EPA will participate in team workgroups and coordinate with other agencies as outlined in the Coordination and Communication Plan developed by the co-lead agencies.

U.S. EPA as a cooperating agency agrees to:

- Identify any Federal permits, licenses, approvals and other similar regulatory actions or decisions that U.S. EPA will be required to make as a result of the proposal.

- Participate in the SDEIS scoping process for the USFS land exchange.
- Participate in individual workgroups to resolve any issues with baseline conditions, environmental impacts and mitigation and assist lead agencies in developing impact analysis approaches for the SDEIS.
- Adhere to the milestones and schedules established by the co-lead agencies including those for individual workgroups, unless timelines are modified in accordance with defined procedures.
- Make a good faith effort to raise all issues during workgroup discussions or reviews of preliminary SDEIS chapters or drafts. Provide comments in good faith that specify issues and additional information U.S. EPA feels is needed to fulfill applicable environmental reviews or consultation requirements and explain why that information is needed. In particular, U.S. EPA shall specify any additional information it needs to comment adequately on the SDEIS analysis of significant impacts.
- Suggest or specify mitigation measures considered necessary to allow U.S. EPA to grant or approve any applicable permit, license, or related requirements or concurrences for which U.S. EPA has jurisdiction by law.
- Notify the USACE, USFS, and MnDNR in writing of any concerns with a preliminary SDEIS by the end of the 30-day or other agreed-upon review period. In that notification, U.S. EPA will describe the unresolved issue or subject area. U.S. EPA may also comment on project-specific documents relied upon or referenced in the preliminary SDEIS.
- Review the SDEIS and FEIS documents during the public notice period and provide comments that specifically address the adequacy of the documents, the relative merits of the proposed action and alternatives.
- Provide the lead agencies with an early indication of the U.S. EPA's rating of the SDEIS and FEIS.
- Consult with Tribes on its CAA 309 NEPA review authority, pursuant to U.S. EPA tribal consultation policies.

C. DISPUTE RESOLUTION PROCEDURES

Every effort will be made by USACE, USFS, MnDNR, and U.S. EPA to reach mutual agreement regarding issues raised during the SDEIS development.

In the event that disputes of a substantive nature arise among the co-lead agencies and U.S. EPA, the following procedures will be used, in sequence, to attempt to resolve these disputes.

1. The parties, through the points of contact, will make concerted, good-faith efforts to resolve any disputes prior to the issuance of the SDEIS. However, the co-lead agencies retain final decision-making authority regarding the content of the SDEIS and FEIS.
2. To the extent that the lead agencies do not agree to adopt U.S. EPA's position, they will promptly initiate a consultation meeting regarding the dispute with all parties at the staff level no later than 15 working days after the close of the Preliminary SDEIS review period.

3. If the lead agencies and U.S. EPA do not come to agreement within a reasonable period of time, either may request the matter be referred to the signatories of the MOU, or their respective designees for consultation.
4. If the issues remain unresolved, lead agencies, will make the final determination on this issue, using the following guidelines:
 - a. For issues that remain in dispute upon issuance of the SDEIS, the co-lead agencies may disclose and discuss U.S. EPA's viewpoint in the appropriate section or chapter of the SDEIS.
 - b. If the information in dispute is not incorporated into the SDEIS, the U.S. EPA will submit the unresolved issue as comments to the lead agencies, which will provide a response to U.S. EPA, either directly via letter or via the response to comments section of the FEIS.
5. After the issuance of the SDEIS, the lead agencies and U.S. EPA will continue to make concerted efforts to resolve any disputes within the established schedule. These attempts may include additional consultations among the parties.
6. If resolution of the dispute(s) cannot be achieved before the deadline for public release of the FEIS, the differing positions necessary for U.S. EPA to support a regulatory decision regarding the project under review will be included in the FEIS. Other comments provided by U.S. EPA prior to release of the FEIS will be considered as comments to the FEIS, which will be addressed by the USACE and USFS in their Records of Decision (RODs) and MnDNR's Determination of EIS Adequacy.
7. Nothing in this MOU is intended to diminish U.S. EPA's rights and responsibilities under CAA Section 309 and 40 C.F.R. Part 1504 regarding referrals to the Council on Environmental Quality.

D. ADMINISTRATIVE

Effective Date

The MOU will be effective upon execution by all parties hereto.

Amendment

The MOU may be amended only by written agreement of all parties.

Expiration or Termination

Unless specifically terminated by the USACE, the USFS, or the MnDNR, this MOU will remain in effect until issuance of the Federal Records of Decision and the State Determination of EIS Adequacy. U.S. EPA may withdraw from this MOU upon written notice to the USACE, USFS, and MnDNR.

Co-lead agency termination of the MOU is accomplished upon written notice to the other co-lead agencies and the U.S. EPA.

Funding

All obligations of the USACE under this agreement are subject to and dependent upon the appropriation and allocation of sufficient funds to the St. Paul District for such purposes.

All obligations of the USFS under this agreement are subject to and dependent upon the appropriation and allocation of sufficient funds to the Superior National Forest for such purposes.

All obligations of the MnDNR are contingent upon receipt of appropriations from the Minnesota State Legislature and/or other funds allotted or lawfully available for preparation of the EIS.

All obligations of the U.S. EPA under this agreement are subject to and dependent upon the appropriation and allocation of sufficient funds to Region 5, U.S. EPA for such purposes.

Judicial Review

Nothing in this MOU shall affect any otherwise available review of agency action. This MOU is intended only to facilitate preparation of a joint Federal-State EIS and does not create any right, benefit, or legal obligation, whether substantive or procedural, or enforceable at law or equity, against the USACE, the USFS, the MnDNR, or any other party to this MOU.

Liability

Each party to this MOU shall be liable for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees or agents. Nothing in this MOU shall be deemed to be a waiver by any of the parties of any applicable state or Federal immunities or limits of liability.

Comments

All comments, notices, or other writings required under this MOU may be sent by electronic mail. However, documents sent by electronic mail will be followed by hardcopies through the U.S. Mail or other delivery service.

Points of Contact

The agency points of contact may be changed at the discretion of the respective agencies with written notice to the other parties. The points of contact for this MOU are:

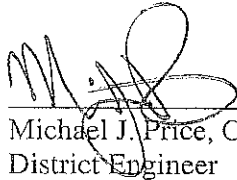
Jon Ahlness, U.S. Army Corps of Engineers, St. Paul District, Regulatory Branch, 180 Fifth Street East, Suite 700, St. Paul, MN 55101-1678.
E-mail: jon.k.ahlness@usace.army.mil.

Tom Hale, U.S. Forest Service, TEAMS Enterprise, 5062 W 7660 S, West Jordan, UT 84081. E-mail: thale@fs.fed.us .

Stuart Arkley, Minnesota Department of Natural Resources, Division of Ecological and Water Resources, Box 25, 500 Lafayette Road, St. Paul, MN 55155.
E-mail: stuart.arkley@state.mn.us.

Kenneth Westlake, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, 77 W. Jackson Blvd., Chicago, IL 60604.
E-mail: westlake.kenneth@epa.gov.

BY THEIR SIGNATURES, THE UNDERSIGNED ATTEST THAT THEY HAVE THE
AUTHORITY TO COMMIT TO THIS MOU ON BEHALF OF THE PARTIES THAT
THEY REPRESENT.



Michael J. Price, Colonel
District Engineer
St. Paul District
U.S. Army Corps of Engineers

8 June 2011

Date

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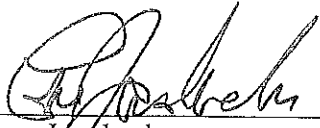


James W. Sanders
Forest Supervisor, Superior National Forest
U.S.D.A. Forest Service

6/02/2011

Date

BY THEIR SIGNATURES, THE UNDERSIGNED ATTEST THAT THEY HAVE THE
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THEY REPRESENT.



Thomas Landwehr
Commissioner
Minnesota Department of Natural Resources

5/27/11

Date

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THAT THEY REPRESENT.



Susan Hedman
Regional Administrator
U.S. EPA, Region 5

6-22-11

Date

